IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3624 of 2007()

CC.567/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

.....

PETITIONER: ACCUSED

B.NIRMALA, TC.1/319,
VELIKKAKATHU VEEDU,
KAZHAKUTTAM, THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: COMPLAINANT & STATE

---

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. S.SUNDARESAN,
VELIKAKATHU VEEDU,
KAZHAKKUTTAM, NOW RESIDING AT
TC 10/154, VISHNU PRIYA, SAP CAMP,
PEROOKADA, THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 3624 of 2007

- -

Dated this the 4th day of December, 2007

O R D E R

The petitioner, a woman, is the sole accused in a prosecution for the offence punishable under Sections 420 and 447 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. The petitioner has already appeared before the learned Magistrate and has been enlarged on bail also, it is submitted. The question of framing charge/discharge has not been considered by the learned Magistrate. It is at that stage that the petitioner has rushed to this Court with this petition under section 482 Cr.P.C. The counsel submits that the allegations against the petitioner are groundless and the petitioner does not deserve to endure the trauma of further proceedings before the learned Magistrate.

2. The short ground on which request is made to this Court to invoke the powers under Section 482 Cr.P.C. is that charges raised against the petitioner are groundless. Ordinarily

and normally an indictee to claim premature termination of proceedings must take resort to the provisions of the Cr.P.C. The stipulations of Section 239/240 Cr.P.C. clearly reveal that where the allegations raised are groundless in a prosecution initiated on the basis of a final report submitted by the police, the accused has the right to claim discharge. Not that this court does not have jurisdictional competence in an appropriate case in the interests of justice to invoke the powers under Section 482 Cr.P.C. to quash the proceedings against an indictee, but such invocation shall be only in exceptional cases, where interests of justice compellingly demand such course. Except that the allegations against the petitioner are groundless, no other circumstances are shown to exist.

3. Having considered all the relevant inputs, I am certainly of the opinion that the petitioner must resort to the ordinary and normal procedure prescribed under the Code to claim premature termination of the proceedings. She must stake her claim for discharge before the learned Magistrate. Needless to say, the learned Magistrate must consider such plea and take appropriate decision expeditiously.

4. It is submitted that unnecessary insistence on personal presence of the petitioner would work out great prejudice and hardship. I find no reason why the learned Magistrate shall insist on personal presence of the petitioner, who has already been enlarged on bail. She can claim exemption and if only the court finds that charges are liable to be framed, then only personal presence of the petitioner need be insisted. Until then the petitioner can be permitted to be represented by her counsel. Appropriate decision on the question of framing charge/discharge must be taken expeditiously, at any rate, within a period of two months from the date on which a copy of this order is produced before the learned Magistrate.

(R. BASANT)
Judge

tm